IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No.9047-C of 2010 in
CM No.9048-C of 2010 in
RSA No.1583 of 1979
Date of decision: 30.8.2010

Smt. Harnam Kaur **.....Appellant(s)**

Versus

Santokh Singh **.....Respondent(s)**

CORAM:- HON'BLE MR.JUSTICE RAKESH KUMAR GARG

* * *

Present: None.

Rakesh Kumar Garg, J. (Oral)

This appeal pertains to the year 1979 and was admitted on 6.8.1979.

This appeal was dismissed in default vide order dated 5.5.2004. The appellant has filed the application for re-admission of the appeal stating that despite repeated requests he was not intimated the fate of his case by his counsel and the factum of the dismissal of this appeal in default vide order dated 5.5.2004 was not intimated to him.

Along with instant application for readmission of the appeal under Order 41 Rule 19 CPC, an application for condonation of delay of 6 years and 30 days in filing this application has been filed submitting therein that the delay in filing the aforesaid application for restoration has been caused due to the negligence of his counsel and therefore, the delay of 6 years and 30 days in filing the application be condoned and the order dated 5.5.2004 be recalled and appeal be restored to its original number.

No one was present on behalf of the applicant on the first call.

Even on the second call, no one is present.

Faced with this situation, the Court has no option but to proceed with the applications. The Hon'ble Supreme Court of India in the case of **Smt. Poonam v. Sumit Tanwar** AIR 2010 Supreme Court 1384 has observed as under:

> "In absence of proper assistance to Court by the lawyer, there is no obligation on the part of the Court to decide the case, for the simple reason that unless the lawyer renders the proper assistance to the Court, the Court is not able to decide the case. It is not for the Court itself to decide the controversy. The counsel cannot just raise the issues in his petition and leave it to the Court to give its decision on those points after through the record and determining the correctness thereof. It is not for the Court itself to find out what the points for determination can be and then proceed to give a decision on those points. In case counsel for the party is not able to render any assistance, the Court may decline to entertain the petition."

Though the Court is not obliged to see the merits of these application yet a perusal of the aforesaid applications would show that there is absolutely no sufficient cause to condone the inordinate delay of 6 years and 30 days in fling this application for restoration of the appeal which was dismissed in default. It is not the case of the appellant that he was not in touch with his counsel, rather from the averments made in this

application, it is found that he was always in touch with his counsel. He has not explained his conduct as to why on earlier occasions before he met Sh. PPS Doabia, Advocate, he had not made any effort to find out the status of his case. The reason as put up by the applicant does not inspire confidence of the Court. Thus, I find that there is no sufficient cause to condone the aforesaid delay of 6 years and 30 days in filing this application for restoration of the appeal.

Thus, the application for condonation of delay in filing the restoration application is dismissed. Resultantly, the application for restoration of the appeal is also dismissed.

August 30, 2010 **(RAKESH KUMAR GARG)**
ps **JUDGE**